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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

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Refer Reply To:  
CC:FIP:B2  
PLR-101180-10  
Date:  
February 05, 2010

TY:

### Legend

Taxpayer =

Trust =

Subsidiary =

State =

Entity Form =

Date =

Country =

Dear \_\_\_\_\_ :

This is in response to your letter dated January 6, 2010, requesting a ruling that income earned from a fund's investment in its wholly-owned subsidiary, which is a

controlled foreign corporation (CFC), constitutes qualifying income under section 851(b)(2) of the Internal Revenue Code as amended (the Code).

### Facts

Taxpayer is organized as a series of Trust, a statutory trust organized under the laws of State. Trust is registered as an open-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the "1940 Act"). Taxpayer represents that it qualifies as a regulated investment company (RIC) under section 851 of the Code. Taxpayer has a fiscal year ending on Date, and uses the accrual method as its overall method of accounting.

Taxpayer has a wholly-owned subsidiary, Subsidiary. Subsidiary is incorporated as an Entity Form under the laws of Country, which provides limited liability for all holders of shares. A shareholder's liability is limited to the amount, if any, unpaid with respect to the shares acquired by the shareholder. Subsidiary will file an election on Form 8832 to be taxed as a corporation pursuant to section 301.7701-3 of the Income Tax Regulations.

Subsidiary is not registered as an investment company under the 1940 Act; Subsidiary will, however, comply with the requirements of Section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related Security and Exchange Commission guidance pertaining to asset coverage with respect to transactions in commodity futures and other transactions in derivatives.

Taxpayer will invest a portion of its assets in Subsidiary, subject to the asset diversification limitations set forth in section 851(b)(3) of the Code. Subsidiary is expected to invest in commodities and commodities-related instruments but may also invest in other securities, debt or hold cash. While it is expected that all of Subsidiary's income will be subpart F income, Taxpayer may also receive income from Subsidiary that is not properly characterized as Subpart F income.

### Law and Analysis

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test (the Qualifying Income Requirement). Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Section 851(b)(2) defines qualifying income, in relevant part, as—

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not

limited to gains from options, futures or forward contracts) derived with respect to [the RIC's] business of investing in such stock, securities, or currencies.... ..

In addition, the flush language of section 851(b) of the Code provides that, for purposes of section 851(b)(2), there shall be treated as dividends amounts included in gross income under sections 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under sections 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a "controlled foreign corporation" as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of voting stock of a foreign corporation. Taxpayer has represented that it will own 100 percent of the voting power of the stock of Subsidiary. Taxpayer is a United States person. Based on Taxpayer's representations, Subsidiary will qualify as a CFC under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of this corporation and who owns stock in this corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the sum of the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952(a)(2) of the Code defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Section 954(c)(1)(A) defines foreign personal holding company income to include dividends, interest, royalties, rents, and annuities. Section 954(c)(1)(C) also defines personal holding company income to include the excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. Section 954(c)(1)(C) does not apply to gains and losses which (i) arise out of commodity hedging transactions (as defined in section 954(c)(5)(A)), (ii) are active business gains or losses from the sale of commodities, or (iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

Subsidiary's income from its investments in commodities and commodity-linked instruments may generate subpart F income. Taxpayer therefore represents that it will

include in income Subsidiary's subpart F income for the taxable year in accordance with section 951.

### Conclusion

Based on the facts as represented, we rule that subpart F income of Subsidiary that is attributable to Taxpayer is income derived with respect to Taxpayer's business of investing in the stock of Subsidiary and thus constitutes qualifying income under section 851(b)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed regarding whether Taxpayer qualifies as a RIC under Subchapter M of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David B. Silber  
David B. Silber  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)